

July 6, 1911.

HON. W. P. WOOD, *State Auditor, Raleigh, N. C.*

DEAR SIR:—Replying to your inquiry of recent date, *in re* the levy of taxes in Robeson County, I beg to advise that it appears that the Commissioners of the county of Robeson purpose to levy *ad valorem* taxes for State and county purposes amounting to 95 cents on each hundred dollars of real and personal property, and also to levy State and county poll taxes to the amount of \$2.85. I am advised that the General Assembly has enacted bills allowing the special taxes enumerated in the letter of Mr. A. T. Parmele to be levied.

The levy of the *ad valorem* tax of 95 cents is entirely lawful and constitutional, but the levy of the \$2.85 poll tax for State and county purposes is contrary to the express inhibition contained in article 5, section 1, of our State Constitution, which declares that the State and county capitation taxes combined shall not exceed \$2.

In the case of *R. R. v. Commissioners*, 148 N. C., page 220, our Supreme Court holds that this mandate of the Constitution is imperative and that the Legislature can not authorize the levy of a poll tax for State and county purposes in excess of \$2. This holding was reaffirmed in a case from Buncombe County, *Southern Ry. v. Commissioners*, 148 N. C., page 248.

Respectfully submitted,

T. W. BICKETT,

Attorney-General.

July 7, 1911.

HON. W. P. WOOD, *State Auditor, Raleigh, N. C.*

DEAR SIR:—Replying to your inquiry of recent date, I beg to advise:

The General Assembly of 1911 levied the following *ad valorem* taxes: Twenty-one cents for State purposes, four cents for pensions, and twenty cents for public schools.

It also levied a poll tax as follows: "On each taxable poll or male between the ages of twenty-one and fifty years, except the poor and infirm whom the County Commissioners may declare and record fit subjects for exemption, there shall be annually levied and collected a tax of one dollar and twenty-nine cents, the proceeds of such tax to be devoted to purposes of education and the support of the poor, as may be prescribed by law, not inconsistent with the apportionment established by section two of article five of the Constitution of this State."

It will be observed that the poll tax is levied as a whole, and not for different specified purposes to correspond with the property tax. The statute does not prescribe how the poll tax shall be divided, but simply refers to the apportionment established by section two, article five, of the State Constitution. That section is as follows: "The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated to the latter purpose."

By virtue of this section it would be competent for the General Assembly to apply ninety-nine per cent of the poll tax to educational purposes, if it should deem it wise to do so, but, as a matter of fact, the General Assembly makes no apportionment, but simply recognizes the limits fixed by the Constitution. An examination of the records in the Auditor's office shows that the following method of apportioning the tax has been consistently adopted for a great many years. The poll tax that corresponds with the *ad valorem*